IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 30.8.2007
CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

W.A.Nos.1135 and 2296 of 2004

P.Venkataraman .. Appellant in W.A.No.1135 of 2004
The Regional Manager,
Region III,
State Bank of India,
No.43, Moore Street,
Madras-600 001 .. Appellant in W.A.No.2296 of 2004
vs.
1. The Regional Manager,
Region No.III,
State Bank of India,
43, Moore Street,
Chennai-600 001 .. 1st respondent in W.A.No.1135 of 2004
2. The Presiding Officer,
Industrial Tribunal,
Madras. ... 2nd respondent in W.A.No.1135 of 2007 &
1st respondent in
W.A.No.2296 of 2004

3. P.Venkataraman ... 2nd respondent in W.A.No.2296 of 2004

PRAYER: Writ appeals have been preferred against the order dated 20.6.2003 made in W.P.No.3692 of 1996.

For Appellant : Mr.T.Murugesan, Sr.counsel
in WA.1135/2004 for Mr.R.Thirignanam
and 2nd respondent
in WA.2296/2004

For 1st Respondent: Mr.V.Karthic
in WA.1135/2004
and appellant
in WA.2296/2004

JUDGMENT
(Judgment of the Court was delivered by P.D.DINAKARAN,J.)

These appeals are directed against the order of the learned Single Judge dated 20.6.2003 made in W.P.No.3692 of 1996, wherein challenge was made to the award dated 21.4.1995 made by the Labour Court in I.D.No.99 of 1990.

2. For the purpose of convenience, the parties would be referred to as arrayed in the writ petition.

3.1. The facts, which are necessary for disposal of these writ appeals, are summarised as under: The second respondent was working as a Clerk in the writ petitioner/Bank. As the second respondent reported late for duty sometime back in January 1983, the acting chance was given to the immediate junior of the second respondent. The same was opposed by the second respondent and ended in verbal exchange, using derisive language, which required the petitioner to demand a written explanation from the second respondent, to which the second respondent retorted by saying whether you have the courage to issue the charge memo and further threatened the Branch Manager by saying that 'I will break your teeth'. Thereafter, the petitioner issued a charge memo, which was attempted to be destroyed by the second respondent by lighting a match stick and thereafter, he took his chappal and raised the same towards the Branch Manager, which was stopped immediately, at the intervention of the staff members.

3.2. An enquiry officer was also appointed and the enquiry was conducted. Based on the findings of the enquiry officer, after issuing second show cause notice, by order dated 26.4.1983 the second respondent was dismissed from service with effect from 19.5.1983.

3.3. The second respondent preferred an appeal to the Appellate Authority, which by order dated 24.8.1983, after giving personal hearing to the second respondent and careful scrutiny of the evidence, dismissed the appeal and confirmed the punishment.

3.4. The order of dismissal was challenged by the second respondent in W.P.No.8583 of 1983 before this Court on the ground that he was not given sufficient opportunity. Accepting the contention put forth by the second respondent that the order of dismissal dated 26.4.1983 dismissing him from service with effect from 19.5.1983 suffers from violation of principles of natural justice, the said writ petition was disposed of by order dated 2.12.1986 directing the management to hold a de-novo enquiry.

3.5. Pursuant to the said order dated 2.12.1986 made in W.P.No.8583 of 1983, a de-novo enquiry was held, the second respondent was permitted to cross-examine the witnesses, and thereafter, the enquiry officer rendered a finding against the employee, which resulted in the issuance of second show cause notice, and ultimately culminated in the confirmation of punishment of dismissal on 27.6.1988. Against which, an industrial dispute was raised in I.D.No.99 of 1990 before the Labour Court.

3.6. The Labour Court, by award dated 21.4.1995, which is impugned in the W.P.No.3692 of 1996, even though found that the second respondent was given reasonable opportunity in the disciplinary action initiated against him, that the enquiry officer was not biased, that the domestic enquiry was fair and proper, that the charges against the second respondent were also proved, and rendered a finding that the second respondent removed his chappal and attempted to beat the Branch Manager and therefore, there was no victimisation, held that the order of dismissal dated 27.6.1988, dismissing the second respondent is shockingly disproportionate to the gravity of the charges and therefore, modified the punishment of dismissal to one of stoppage of two increments with cumulative effect.

3.7. The award dated 21.4.1995 passed by the Labour Court in I.D.No.99 of 1990 was challenged by the petitioner in W.P.No.3692 of 1996. Pending the writ petition, the petitioner was directed to comply with the requirements contemplated under Section 17-B of the Industrial Disputes Act. The petitioner instead of complying with the requirements contemplated under Section 17-B of the Industrial Disputes Act reinstated the second respondent with all attendant benefits. After

reinstatement, the second respondent was also promoted to the next higher post of Senior Assistant on 31.3.2001, with retrospective effective effect from 1.4.1999. Immediately thereafter, the second respondent was permitted to retire from the post of Senior Assistant on 31.3.2001 itself under Voluntary Retirement Scheme.

3.8. The learned Single Judge, after considering the findings of the Labour Court, by order dated 20.6.2003 made in W.P.No.3692 of 1996 set aside the award dated 21.4.1995 passed by the Labour Court and confirmed the order of dismissal passed by the petitioner and held that the Labour Court erred in reducing the punishment of dismissal into one of stoppage of two increments with cumulative effect, without any justification. However, taking into consideration the subsequent events, viz., the management instead of complying with the requirement contemplated under Section 17-B of the Industrial Disputes Act, namely, payment of full wages to workman pending proceedings in higher Courts, reinstated the second respondent during the pendency of the writ petition, promoted him as Senior Assistant on 31.3.2001 with retrospective effect from 1.4.1999 and permitted him to retire under Voluntary Retirement Scheme on 31.3.2001, the learned single Judge refused to recall the benefits availed by the employee and also refused to allow the employee to have the benefit of backwages based on the reinstatement.

3.9. Aggrieved by the refusal to recall the benefits availed by the second respondent, the petitioner preferred W.A.No.2296 of 2004 and aggrieved by the refusal to allow the second respondent to have the benefit of backwages, the second respondent preferred W.A.No.1135 of 2004.

4. According to Mr.V.Karthic, learned counsel for the petitioner, the learned Single Judge by order dated 20.6.2003 made in W.P.No.3692 of 1996, having confirmed the findings of the Labour Court in the award dated 21.4.1995 made in I.D.No.99 of 1990 that the second respondent was given reasonable opportunity in the disciplinary action initiated against him, that the enquiry officer was not biased, that the domestic enquiry was fair and proper, that the second respondent removed his chappal and attempted to beat the Branch Manager, that the charges against the second respondent were also proved, and held that the order of dismissal passed by the petitioner is fully justified and there is no necessity to modify the punishment to that of stoppage of stoppage of two increments with cumulative effect, erred in refusing to recall the benefits availed by the second respondent, and that the order of dismissal operates from the date of passing of the same by the petitioner, viz., 27.6.1988, but not from the date of award of the Labour Court, viz., 21.4.1995.

5. Mr.T.Murugesan, learned Senior Counsel appearing for the second respondent contends that as the petitioner reinstated the second respondent, promoted him as Senior Assistant on 31.3.2001 with retrospective effect from 1.4.1999 and permitted him to retire under voluntary retirement scheme on the same day, viz., 31.3.2001, unconditionally, the order of dismissal stands modified and therefore, the second respondent is entitled to backwages.

6. We have given our careful consideration to the submissions put forth by the learned counsel on either side.

7. It is true that in MAHENDRA NISSAN ALLWYNS LTD. v. M.P.SIDDAPPA AND ANOTHER 2000 (4) L.L.N. 562 and DAMODARAN v. PRESIDING OFFICER, SECOND ADDITIONAL LABOUR COURT, MADRAS AND ANOTHER, 2002 (3) L.L.N. 314 it was held that order of dismissal for use of abusive words is grossly disproportionate. However, the said decisions are no more good law in view of the decision of the Apex Court in HOMBE GOWDA EDUCATIONAL TRUST AND ANOTHER v. STATE OF KARNATAKA, (2006) 1 SCC 430, wherein, while holding that the use of abusive words and attempt to assault the superior officer even on grave provocation by them amounts to gross misconduct warranting punishment of dismissal, the Apex Court held as under:

"30. This Court has come a long way from its earlier view points. The recent trends in the decisions of this Court seek to strike a balance between the earlier approach of the industrial relation wherein only the interest of the workmen was sought to be protected with the avowed object of fast industrial growth of the country. In several decisions of this Court it has been noticed how discipline at the workplace/ industrial undertakings received a set back. In view of the change in economic policy of the country, it may not now be proper to allow the employees to break the discipline with impunity. Our country is governed by rule of law. All actions, therefore, must be taken in accordance with law. Law declared by this Court in terms of Article 141 of the Constitution, as noticed in the decisions noticed supra, categorically demonstrates that the Tribunal would not normally interfere with the quantum of punishment imposed by the employers unless an appropriate case is made out therefor. The Tribunal being inferior to this Court was bound to follow the decisions of this Court which are applicable to the facts of the present case in question. The Tribunal can neither ignore the ratio laid down by this Court nor refuse to follow the same. "

8. The Apex Court in L.K. Verma v. HMT Ltd. and Another, (2006) 2 SCC 269, held that verbal abuse was sufficient for inflicting punishment of dismissal, and the contention of the workman regarding quantum of punishment could not be countenanced.

9. In our considered opinion, the decision of the learned Single Judge, setting aside the award dated 21.4.1995 made in I.D.No.99 of 1990 modifying the order of dismissal into one of stoppage of two increments with cumulative effect, is fully justified. However, as the petitioner reinstated the second respondent in lieu of compliance of Section 17-B of the Industrial Disputes Act, promoted him as Senior Assistant on 31.3.2001 with retrospective effect from 1.4.1999 and permitted him to retire under Voluntary Retirement Scheme on 31.3.2001 unconditionally, we do not see any justification in recalling the benefits availed by the second respondent on the ground that the order of dismissal operates from the date of passing of the same by the employer, viz., 27.6.1988, but not from the date of award of the Labour Court, viz., 21.4.1995, placing reliance on the ratio laid down in R.THIRUVIRKOLAM VS. PRESIDING OFFICER AND ANOTHER, (1997) 1 SCC 9, relied upon by the petitioner, as the facts of the case on hand differ from the facts of R.THIRUVIRKOLAM case, referred supra, as the employee, in the said case, was not reinstated. We, therefore, do not see any merit to recall the benefits availed by the employee.

10. Likewise, we do not see any merit in the contention made by Mr.T.Murugesan, learned Senior Counsel for the second respondent seeking backwages on the strength of the reinstatement of the second respondent, as the Apex Court in J.K.SYNTHETICS LTD., VS. K.P.AGRAWAL AND ANOTHER, (2007) 2 SCC 433 held as under:
"the entitlement of backwages on 'misconduct reinstatement' is not an automatic nor the necessary consequence of such reinstatement is the same as in the case of reinstatement on 'illegal termination', which are obviously distinguishable."

11. The learned Single Judge, in clear terms held that the second respondent has committed gross misconduct and there were no procedural lapses, irregularity, nor the enquiry officer was biased or there was any violation of the principles of natural justice and therefore, the order of dismissal is sustainable in law. That apart, the reinstatement ordered in lieu of compliance of requirement contemplated under Section 17-B of the Industrial Disputes Act or any subsequent development would not tantamount to an order of reinstatement simplicitor, which alone would amount to withdrawal of order of dismissal. We, therefore, do not see any justification to award backwages as sought for by the second respondent.

In the result, both the appeals fail and the same are dismissed. However, it goes without saying that whatever benefits the second respondent is entitled to under the Voluntary Retirement Scheme, the

same shall be settled to him, if not settled till date, within 60 days from the date of receipt of copy of this Court. No costs.

(P.D.D.J.) (R.R.J.)
30.8.2007
msk/sasi

1. The Regional Manager,
State Bank of India,
Region No.III,
43, Moore Street,
Chennai-600 001

2. The Presiding Officer,
Industrial Tribunal,
Madras.

P.D.DINAKARAN,J.
AND
R.REGUPATHI,J.

[Msk/sasi]

30.8.2007